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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,725	12/04/2003	Dan T. Moore III	35202US1	6917

116 7590 11/22/2006

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EXAMINER

KUHNS, ALLAN R

ART UNIT PAPER NUMBER

1732

DATE MAILED: 11/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/727,725

Applicant(s)

MOORE ET AL.

Examiner

Allan Kuhns

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25,34-36,38,39 and 41-63 is/are pending in the application.
- 4a) Of the above claim(s) 1-25,34-36,38,39,41,52-55 and 57-63 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 42-50 and 56 is/are rejected.
- 7) ☒ Claim(s) 51 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 12 04 03, 02 13 04, 09 03 04, 12 16 04, 01 09 06, 03 09 06 & 07 25 06
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

1.Applicant's election without traverse of Group II, claims 42-51 and 56 in the reply filed on October 31, 2006 is acknowledged.

2.Claims 1-25, 34-36, 38, 39, 41, 52-55 and 57-63 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on October 31, 2006.

3.Claims 42-50 and 56 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 42 is so broad that one of ordinary skill in the art would be unable to determine its metes and bounds because it is submitted that substantially any liner which is custom fitted to a wearer's head will attenuate, at least to some degree, the force of impact resulting from an impact velocity of from 2-7 m/sec. In addition, claim 56 is dependent on claim 1, which is withdrawn from consideration.

4.Claim 51 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 51 contains the same limitations which are also present in independent claim 42.

5.The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 42-45 and 56 are rejected under 35 U.S.C. 102(b) as being anticipated by Tirums (5,056,162). Tirums discloses a helmet having an impact or energy absorbing liner which is custom made such that the liner substantially conforms to the shape of the wearer's head. Note MPEP 2113 with respect to the treatment of product-by-process claims. It is submitted that the liner of Tirums would inherently attenuate, at least to some degree, the force of impact resulting from an impact velocity within the range of 2-7 m/sec, as in claim 42. Tirums illustrates one-piece liner 14 A in Figure 3, as in claims 43 and 45, the liner conforming to the shape of the wearer's head, as in claim 44.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allan Kuhns whose telephone number is (571) 272-1202. The examiner can normally be reached on Monday to Thursday from 7:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson, can be reached on (571) 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Allen R. Kuhns*

ALLAN R. KUHNS  
PRIMARY EXAMINER AU 1732

11-17-06